IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

M/s Rajasthan Steels v. M/s Jyoti Steels & Ors.

S.B.CIVIL WRIT PETITION NO.1173/2005
under Articles 226 and 227 of the Constitution of India.

Date of Order : 2nd March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Pradeep Shah, for the petitioner.

BY THE COURT :

By this petition for writ under Article 227 of the Constitution of India a challenge is given to the order dated 18.1.2005 passed by learned Additional District Judge (Fast Track) No.2, Bhilwara on an application preferred by the plaintiff under Order VII Rule 14 CPC.

The application under Order VII Rule 14 CPC was filed by the plaintiff petitioner on 4.12.2004 in a suit for recovery of a sum of Rs.11,VII6,5OO/-. By the said application leave was sought to take 22 documents relating to correspondence between the defendant and Kamdhenu Spat Ltd. The documents were said to be in power and possession of the representative of Kamdhenu

Ispat Ltd. at the time of presenting the plaint. Thus leave was sought to take the same on record being related to the subject matter of the suit. The plaintiff also stated in the application that the documents sought to be taken on record by seeking leave by the court under Order VII Rule 14 CPC were already filed before the court while recording statements of one of the partners of the plaintiff firm.

The trial court while adjudicating the application found that the documents, with regard to which leave was sought to take on record, were marked as Ex.566 to Ex.587 in an affidavit sworn-in by Anil Kumar Pokharna, a partner of the plaintiff firm. The affidavit sworn-in by Shri Anil Kumar was taken as his statement in chief. The affidavit was filed before the trial court on 6.11.2004. The above named Anil Kumar was cross examined by the counsel for the defendant on 4.12.2004.

The trial court by order impugned ordered that the documents referred in the application under Order VII Rule 14 CPC be not taken on record as on 6.11.2004, the date on which affidavit sworn-in by Anil Kumar was filed, the documents were not part of the record. The trial court also ordered to make a note on the statements deposed by Shri Anil Kumar to the effect that the documents referred therein be not read being not part of the record.

It is contended by the counsel for the plaintiff petitioner that the trial court dismissed the application under Order VII Rule 14 CPC though the defendant sought time to file reply to the application. According to him the application preferred was neither baseless nor was based on false and concocted facts and the documents sought to be taken on record are related to the issue and subject of the suit and the trial court without considering it dismissed the application, therefore, order impugned is manifestly perverse and as such deserves to be quashed.

I have thoroughly examined and considered the order impugned.

The trial court in the order dated 18.1.2005 at inception stated that the counsel for the defendant wants time to file reply to the application preferred by the plaintiff under Order VII Rule 14 CPC. The trial court further stated that from the perusal of record it appeared that though the photostat copies of the documents submitted by the plaintiff along with the application under Order VII Rule 14 CPC are yet not part of the record but were marked as Ex.566 to Ex.587 in the affidavit sworn-in by Anil Kumar. The affidavit was filed before the court on 6.11.2004. The said affidavit was taken as statement in chief and Anil Kumar was cross

examined with regard to the statements made by him through the affidavit. The trial court on observing these facts ordered that the documents marked as Ex.566 to Ex.587 being not part of the record could not be read in evidence.

The plaintiff petitioner is not only reading the order passed by the court below totally out of context but himself is getting misled by misreading of the order dated 18.1.2005. From reading of the order dated 18.1.2005 it is apparent that the trial court passed that order in context to the statements given by a partner of the petitioner firm namely Anil Kumar.

As stated above, in the form of an affidavit statement of Shri Anil Kumar in chief were taken on record. The affidavit was submitted on 6.11.2004 and Anil Kumar was cross examined thereupon on 4.1.2005. It is a fact admitted that the documents in issue are yet not part of the record and were also not part of the record on 6.11.2004 as well as on 4.12.2004, therefore, the trial court rightly ordered to the effect that the same be not read in evidence while considering statements of plaintiff i.e. Anil Kumar statements of whom were recorded on 6.11.2004 and 4.12.2004. The court also made an order to make a note on the statements to the effect that the documents Ex.566 to Ex.587 be not read in evidence. This fact clearly shows that the order was made by the court only in context to the statements of Anil Kumar

which were submitted in a form of an affidavit and the cross examination made thereon.

In view of it, the order passed by the trial court does not suffer from any error of jurisdiction as alleged. On the contrary, the order passed is in consonance to sub-rule(3) of Rule 14 of Order VII CPC according to which a document which ought to be produced in court by the plaintiff when the plaint is presented or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not be without the leave of the court be received in evidence of the plaintiff at the hearing of suit. In the present case the plaintiff preferred an application under Order VII Rule 14 CPC on 4.1.2005 seeking leave to take the documents in issue on record, therefore, the documents could not have been marked as annexures on 6.11.2004 and as such could not be received in evidence without getting leave by the court as required under sub-rule(3) of Rule 14 of Order VII CPC.

In light of whatever stated above, the writ is devoid of merit, hence the same is hereby dismissed.

No order as to cost.

(GOVIND MATHUR),J.

kkm/ps.